

FOSTER CHILDREN RIGHTS REPORT TO THE LEGISLATURE

STATE OF CALIFORNIA
Gavin Newsom, Governor

HEALTH AND HUMAN SERVICES AGENCY
Michael Wilkening, Secretary

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
Pat Leary, Acting Director



LEGISLATIVE MANDATE

Report to the Legislature Foster Youth Bill of Rights (Assembly Bill 1067)

Legislative Mandate

Assembly Bill (AB) 1067 (Chapter 861, Statutes of 2016) requires the California Department of Social Services (CDSS) to convene a working group regarding the rights of all minors and nonminors in foster care in order to educate foster youth, foster care providers and others on the Foster Youth Bill of Rights (FYBR). AB 1067 also requires the working group to make recommendations to the Legislature for revising the FYBR, initially established in 2002. The bill specifies the responsibilities and composition of the working group as follows:

(a) The working group's responsibilities include all of the following:

- (1) Make recommendations to the Legislature for revising the rights based on a review of state law.
- (2) By July 1, 2018, develop standardized information regarding the revised rights in an age-appropriate manner and reflective of any relevant licensing requirements with respect to the foster care providers' responsibilities to adequately supervise children in care.
- (3) By July 1, 2018, develop recommendations regarding methods for disseminating the standardized information specified in paragraph (2), including whether to require the signature of a foster child verifying that he or she has received and understands his or her rights.
- (4) By July 1, 2018, develop recommendations for measuring and improving, if necessary, the degree to which foster youth are adequately informed of their rights.

(b) The working group shall be composed of all of the following:

- (1) The Office of the State Foster Care Ombudsperson;
- (2) The bureau at the Department of Justice whose mission is to protect the rights of children;
- (3) The County Welfare Directors Association of California;
- (4) The Chief Probation Officers of California; (5) The County Behavioral Health Directors Association of California;
- (6) Current and former foster youth;
- (7) Foster parents and caregivers;
- (8) Foster children advocacy groups;
- (9) Foster care provider associations; and
- (10) Any other interested parties.

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California Department of Social Services

744 P Street, MS 8-16-32

Sacramento, CA 95814

(916) 657-2623

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EXECUTIVE SUMMARY

AB 1067 requires CDSS to convene a working group comprising foster youth, counties, advocacy groups and others to review the FYBR in current law and for the working group to make recommendations to the Legislature for revising the rights to better educate foster youth, foster care providers, and others. CDSS convened the working group, which recommends the following changes to state law:

- (1) Develop updated standardized information regarding the revised rights in an age-appropriate manner and reflective of any relevant licensing requirements with respect to the foster care providers' responsibilities to adequately supervise children in care.
- (2) Diversify methods for disseminating the standardized information and for verifying that the foster youth receives and understands the information.
- (3) Implement mechanisms for measuring and improving, if necessary, the degree to which foster youth are adequately informed of their rights.
- (4) Amend California Welfare and Institution Code (WIC) Sections 16001.9 and 16164 and California Health and Safety Code (HSC) Section 1530.91 to implement these recommendations in statute.

BACKGROUND

The FYBR was created through the passage of AB 899 (Chapter 851, Statutes of 2001) and implemented WIC Section 16001.9, effective January 1, 2002. This landmark legislation identified 21 rights for foster youth. Since then, the FYBR has been amended several times to reflect changes in the law. As each new law passed, CDSS' Office of the Foster Care Ombudsperson (OFCO) updated the language in the FYBR publication materials.

In 2003, AB 458 (Chapter 331, Statutes of 2003) was passed and added WIC Section 16001.9(a)(22), which ensures that foster youth “have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.”

The second amendment to the FYBR occurred with passage of Senate Bill (SB) 1639 (Chapter 668, Statutes of 2004) which added to WIC Section 16001.9(a)(23) the right for youth age 16 and older to have access to existing information regarding the educational and financial aid options for vocational and postsecondary education.

AB 1412 (Chapter 640, Statutes of 2005) added a new right which became WIC Section 16001.9(a)(19) and amended the number of the rights from WIC Section 16001.9(a)(19-24). The addition of this new right mandated that a child in foster care be involved in the development of his or her own case plan and plan for permanent placement, and it revised the age a child in foster care to have the right to review his or her case plan and plan for permanent placement to 12 years of age or older.

In 2010, SB 1353 (Chapter 557, Statutes of 2010) was passed to increase educational stability for foster youth. In addition to requiring that child welfare agencies and probation departments attempt to place children in foster placements near their schools of origin and to minimize disruption in their school attendance setting, it amended WIC Section 16001.9 (a)(13) to articulate that foster children had a right to attend school and participate in extracurricular activities with minimal disruption to their school attendance.

Two years later, AB 1856 (Chapter 639, Statutes of 2012) passed and added the 25th right to the FYBR requiring caregivers and child welfare personnel to be trained on cultural competency and sensitivity relating to the provision of care for lesbian, gay, bisexual and transgender youth in foster care.

In 2013, SB 528 (Chapter 338, Statutes of 2013) was passed and added the 26th right to WIC Section 16001.9, ensuring foster youth have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections at 12 years of age or older.

In 2015, SB 731 (Chapter 805, Statutes of 2015) was passed and created the 27th right in WIC Section 16009.1, which requires foster youth to be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court or child welfare records. Lastly, WIC Section 16001.9 (a)(19) was amended with the passage of AB 2119 (Chapter 385, Statutes of 2018) which implements the right for foster youth to access gender affirming health and mental health care.

In 2016, the California Youth Connection (CYC) and the Humboldt County Transition Age Youth Collaboration sponsored AB 1067 requiring CDSS to convene a working group to update the FYBR. The bill passed unanimously in both the Assembly and Senate and was signed into law by Governor Edmond G. Brown on September 30, 2016. The resulting statute, WIC Section 16001.8, instructed the working group to make recommendations for revising the rights based on a review of state law; develop standardized information regarding the revised rights in an age-appropriate manner and reflective of any relevant licensing requirements with respect to the foster care providers' responsibilities to adequately supervise children in care; develop recommendations regarding methods for disseminating the standardized information; and develop recommendations for measuring and improving, if necessary, the degree to which foster youth are adequately informed of their rights.

The working group was required to include representatives from OFCO, the bureau at the Department of Justice dedicated to protecting the rights of children, the County Welfare Directors Association (CWDA), the Chief Probation Officers of California (CPOC), the County Behavioral Health Directors Association of California), current and former foster youth, foster parents and caregivers, foster children advocacy groups, foster care providers associations and any other interested parties. Because of OFCO's expertise in foster youth rights, former CDSS Director Will Lightbourne delegated chairmanship of the working group to OFCO.

OFCO held the first stakeholder meeting on October 21, 2016, and had approximately 90 attendees, with participants representing all the groups as required by AB 1067. Over the next year, OFCO interviewed over 200 youth and foster parents across California to gather input and recommendations. During this time, the Los Angeles County Board of Supervisors (the Board) adopted a motion on March 12, 2017, "that as the largest child welfare system in the country, Los Angeles County should create its own Foster Youth Bill of Rights and Services that provides the necessary information about services, programs, and legislative mandates to youth and resource families." The Commission for Children and Families (CCF), a group that advises the Board on strengthening service delivery systems and enhancing partnerships to create safer and more secure futures for Los Angeles County's at-risk children and their families, was directed to convene a working group to accomplish this work.

OFCO and CCF met several times to coordinate and collaborate efforts, including the creation of a comprehensive matrix of laws and regulations pertaining to foster youth in the State of California. There were overlapping requirements of AB 1067, the Board's directives, and the statutory mandates of WIC Section 16501.1 and HSC Section 1530.91. Because of this, and the shared vision and principles of the two groups, the CCF collaborated closely with OFCO to ensure alignment of the FYBR with the revised WIC Section 16001.9 and minimize the risk of developing conflicting documents.

OFCO also conducted a series of youth focus groups in 2018 to inform and respond to the work completed by the stakeholder working group. There were 12 statewide focus groups, with 122 total youth participants representing the following counties: Alameda, El Dorado, Fresno, Humboldt, Mariposa, Riverside, Santa Barbara, Stanislaus, Tulare, Ventura, Yolo, and Yuba. Additional feedback was also gathered through individual interviews and a workshop with youth at the 2018 CYC Summer Policy Conference. In the focus groups and interviews, current and former foster youth reported that they are not knowledgeable about their rights, despite the various legislative mandates and State directives governing how and when they are to be informed. These responses reflect the need to develop better strategies to engage, educate, and empower foster youth regarding their rights in ways that are authentic and impactful.

While OFCO conducted its review of the FYBR, the California Tribal Families Coalition (CTFC) issued the Indian Child Welfare Act (ICWA) Compliance Task Force Report to the California

Attorney General's Bureau of Children's Justice (2017), recommending that "there should be a legislative amendment to the foster care bill of rights that unequivocally codifies ICWA enforcement and application as a tribal foster care child's rights." (ICWA Comp. Task Force Rpt., p. 97 (Recommendation 5))¹. OFCO met with CTFC members and their representatives to incorporate language reflective of the Indian Child Welfare Act of 1978 and the 2016 Bureau of Indian Affairs ICWA regulations. The recommendations were also submitted to Tribal Chairs and Tribal Advocacy Organizations on September 27, 2018, for formal State government to Tribal government consultation on the rights to be included in the FYBR.

The final stakeholder convening was held on October 4, 2018. At this convening, the final recommendations drafted in response to the working group, focus groups, and other stakeholder input were reviewed and agreed upon by the working group. Over the course of the stakeholder process that has taken place since October 2016, and through the expertise of its participants, the working group gathered vital information and invaluable insights informing the recommendations included in this report.

Stakeholders consistently expressed the importance of ensuring accountability for adherence to the rights contained within the FYBR. Working group members voiced concerns that empowering foster youth with information about their rights without also educating them as to their responsibilities and providing proper context would be a disservice, and could have unintended consequences, such as discord between the youth and caregiver. Furthermore, the working group review of state law revealed that many sections of code could be interpreted either as a responsibility or a right. In an effort to balance the feedback and the review of state laws, the working group expressed the belief that the respective responsibilities of social workers/probation officers, caregivers, and foster youth should be delineated in the FYBR publications, but not in the statutory list of rights. The working group also determined that social workers/probation officers, caregivers, as well as foster youth-serving partners, would benefit from additional information and training on foster youth rights and the reasonable and prudent parent standard, including training specifically on ways of effectively communicating with youth about their rights.

RECOMMENDED REVISIONS TO WELFARE AND INSTITUTIONS CODE

SECTION 16001.9 FOSTER YOUTH BILL OF RIGHTS

Currently WIC Section 16001.9 consists of 27 distinct rights for minors and nonminor dependents. After robust stakeholder discussions and a review of state law, it is recommended that 12 additional rights be added to the FYBR, most of which exist in other sections of law. The working group recommends changing statutory language to consistently use the word "child" and "nonminor dependent" as previous statutes had inconsistently used "child" and "youth," and to change gendered language (he/she) to gender-neutral pronouns "they," "them" and "their." The recommended revisions also include reorganizing and listing the rights thematically. The rights of Indian children under ICWA are reflected throughout the proposed revisions to WIC Section 16001.9.

The following section identifies each right and any statutory authority, and if there is no existing statutory authority, the rationale for adding the right. See attachment A for the recommendations for the formal statutory language changes.

16001.9(a)

It is the policy of the state that all ~~minors and nonminors in foster care~~ children placed in foster care, either voluntarily or pursuant to Section 300 and Section 600 and following, shall have the following rights contained in this section. These rights also apply to nonminor dependents in foster care except where they conflict with nonminor dependents' retention of all their legal decision-making authority as an adult. The rights are as follows:

- The recommended change will clarify the populations to which these rights apply.

16001.9(a)(1)

To live in a safe, healthy, and comfortable home where ~~he or she is~~ they are treated with respect. If the child is an Indian child, to live in a home that upholds the prevailing social and cultural standards of the child's Indian community, including, but not limited to, family, social or political ties.

- The recommended change will reflect gender neutral language.
- The recommended change incorporates the protections to Indian children afforded under ICWA, specifically the right of an Indian child to live in a culturally appropriate home.

16001.9(a)(2)

To be free from physical, sexual, emotional, or other abuse, ~~or~~ corporal punishment and to be free from exploitation.

- The recommended change reflects the right of children and nonminor dependents to be free from exploitation, as described in WIC Section 16501.1, WIC Section 300(b)(2) and Penal Code Section 236.1.

16001.9(a)(3)

To receive adequate and healthy food, adequate clothing, grooming and hygiene products and, for youth in group homes, an age-appropriate allowance. Clothing, grooming and hygiene products shall respect the child's culture, ethnicity, gender identity and expression.

- One of the most common issues cited by current and former foster youth during the stakeholder process was that all youth, not only youth in group homes, need access to an allowance. The California Youth Transitions to Adulthood study (Courtney et al., 2018)ⁱⁱ found that nearly half of former foster youth felt unprepared to deal with financial matters, and one-third indicated they had received no financial literacy skills at all. An allowance is one way for youth to gain experience and competence in managing income, a vital life skill. Additionally, a key goal of the implementation of CDSS' Continuum of Care Reform (CCR) is placing children in family homes and using congregate care only

as a short-term therapeutic intervention. Therefore, this recommended change reflects a more equitable and developmentally appropriate experience for foster youth regardless of the setting in which they reside. A more restrictive care setting should not be the only placement where youth has access to an allowance.

- The recommended change expressly reflects the need for clothing, grooming and hygiene products to respect the youth's sexual orientation as outlined in All County Letter (ACL) 17-64, which implemented SB 731 (Chapter 805, Statutes of 2015).

16001.9(a)(12)(4)

To not be locked in a room, building or facility premises in any portion of the child's foster care placement, unless placed in a community treatment facility.

- The recommended change clarifies that children shall never be locked in foster care unless placed in a community treatment facility. This clarity was needed to prevent situations where children were locked in portions of group homes or in their bedrooms in foster care, which is an impermissible violation of licensing regulations. (22 California Code of Regulations (CCR) 87002(a)(7), 83072(d)(10), 84072(d)(14), 89372(b)(1).) Absent due process, locking a child in a foster placement or any portion of a foster placement is a violation of the child's fourth amendment right to be free from unlawful search and seizure. Foster children may be placed in a community treatment facility only if provided due process protections that ensure such commitments are voluntary, including having the placement confirmed by a juvenile court judicial officer. (WIC 4094, subds. (h) & (i).) Moreover, foster children may only be placed in a community treatment facility after they have been certified by a qualified mental health professional as seriously emotionally disturbed and after less restrictive mental health interventions have failed to meet the child's needs. (WIC 4094, 4094.5.) Thus, this is the only exception to the prohibition on locking a child in a foster placement and should be explicit in state law.

16001.9(5)

To have a placement that utilizes trauma-informed and evidence-based de-escalation and intervention techniques and to have law enforcement intervention requested only when there is an imminent threat to the life or safety of a child or another person or as a last resort after other diversion and de-escalation techniques have been utilized. To not have law enforcement intervention used as a threat or in retaliation against the minor or nonminor.

- The recently passed budget trailer bill (AB 1811, Chapter 35, Statutes of 2018) enacted HSC Section 1531.6, which requires each group home, short-term residential therapeutic program (STRTP) or temporary shelter to develop protocols to employ trauma-informed and evidence-based de-escalation and intervention before contacting law enforcement. The recommended change provides additional support for existing group home regulations, 22 CCR Section 84072.1, which prohibit threatening to call law enforcement or calling law enforcement as a form of discipline.

- The working group recommends that this right be extended to youth in foster homes as well as those in congregate care, based on federal Reasonable and Prudent Parenting requirements (42 U.S.C. § 671, subd. (a)(10)) and Resource Family Approval Written Directives, Section 11-082(b), which prohibit the caregiver from using “unusual” punishments, “intimidation” and “threats.”

16001.9(6)

To not be detained in a juvenile detention facility, based on their status as a dependent of the court or the child welfare services department’s inability to provide a foster care placement. If detained, to have all the rights afforded under the Constitution of the United States, the Constitution of California and all applicable state and federal laws.

- Per WIC Section 628(a)(2), it is contrary to California statute for a child to be held in a juvenile detention facility based on the child welfare services agency’s inability to provide placement. However, OFCO has received complaints indicating that minors have been held at a detention facility for hours or days after they were ordered released by the delinquency court because the child welfare services agency was unable to locate promptly an appropriate placement. Additionally, stakeholders strongly advocated for this right to be included. The recommended changes reflect that not only do the children have the right against prolonged detention, but that their status as foster children does not lower the bar for their treatment while in detention.

16001.9(a)(18)(7)

To have storage space for private use.

- No recommended changes to existing language.

16001.9(a)(21)(8)

To be free from unreasonable searches of personal belongings.

- No recommended changes to existing language.

16001.9(6)(9)

To contact family members, unless prohibited by court order, and to be provided the names and contact information for social workers and/or probation officers, attorneys, service providers, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and Education Rights Holder, if other than the parent or parents, and when applicable, representative(s) designated by the child’s Tribe to participate in the juvenile court proceeding, and to contact communicate with these individuals privately. probation officers.

- Recommended changes address the right to contact relatives separately from the right to contact professionals involved in their case. The right to have contact with relatives would be a separate right as reflected in the proposed changes to subdivision (a)(10) immediately following this provision.
- Recommended changes reflect a more complete listing of people to whom foster youth have the right to speak privately, and to reflect that the youth must be provided with the contact information for these individuals.

- Recommended changes reflect the rights of Indian children to maintain contact with their Tribes, as afforded by ICWA.

16001.9(a)(7)(10)

To visit and contact ~~brothers and sisters~~ siblings, family members, and relatives privately, unless prohibited by court order, and to ask the court for visitation with the child's siblings.

- Amended to include “family members” moved from WIC Section 16001.9(a)(9).
- Recommended changes reflect gender neutral language.
- Recommended changes reflect a variety of provisions of the WIC. Notably, Section 361.2 requires the juvenile court to “consider whether the family ties and best interest of the child will be served by granting visitation rights to the child’s grandparents.” (WIC 361.2, subd. (i).) It also requires that the court address maintaining or developing sibling relationships. (WIC 361.2, subd. (j).) WIC also requires the agency and the court to give preferential consideration of placement of a child with relatives. (WIC 361.2, subd. (e)(1), 361.3, subd. (a).) In assessing placement with relatives, the court and the agency must consider the nature of the relationship of the child with the relative (WIC 361.3, subd. (a)(6)) and whether the relative will facilitate visitation with other relatives (WIC 361.3, subd. (a)(7)(F).). From these provisions, it is clear that children in foster care retain a right to visit and contact their relatives, subject to a court order to the contrary.
- Recommended changes also reflect the right of youth to have continued contact with all relatives, not only siblings. The California Youth Transitions to Adulthood study (Courtney et al., 2016)ⁱⁱⁱ revealed that 60 percent of foster youth surveyed at age 19 indicated that not enough was done to help them maintain or strengthen relationships with close family members after they entered care. OFCO has often seen family relationships inappropriately limited by foster parents or social workers and is working through better training and outreach to reinforce the fact that foster children have a right to maintain family connections.
- Recommended changes add the right to ask the court for visitation with siblings per WIC Section 361.2 (j).

16001.9(a)(9)(11)

To make, send and receive confidential telephone calls, and other electronic communications, and send and receive unopened mail, unless prohibited by court order.

- The recommended changes reflect the provisions of AB 2448 (Chapter 997, Statutes of 2018) which amended WIC Sections 362.05 and 727 to ensure that foster children have access to computing technology and the internet.

16001.9(a)(15)(12)

To have social contacts with people outside of the foster care system, including but not limited to teachers, coaches, church religious or spiritual community members, mentors, and friends. If the child is an Indian child, they have the right to have contact with tribal members consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe.

- The recommended changes reflect stakeholder feedback that “coaches” should be included as persons with whom foster children may have social contact. Additional recommended changes are more reflective of diverse religious and spiritual beliefs and First Amendment protections for all religious and spiritual practices and for free association. These are consistent with California’s regulatory scheme requiring that children “be free to attend religious services or activities of [their] choice and to have visits from the spiritual advisor of [their] choice.” (22 CCR 84072(d).)
- The recommended changes also add express recognition of the federally protected rights of Indian children to maintain their connection to their Tribe(s), as recommended in the ICWA Compliance Task Force Report and supported by Tribes during government-to-government consultation.

16001.9(a)(10)(13)

To attend religious services, ~~and activities~~ and ceremonies of ~~his or her~~ the child’s choice, including engaging in traditional Native American religious practices.

- The proposed changes reflect the protections afforded to Native American religious practices under the American Indian Religious Freedom Act (42 United States Code (USC) § 1996).
- The proposed changes clarify that the right to practice one’s religion includes religious/spiritual ceremonies, not just church services or Sunday school. This would ensure a youth could attend ceremonies and festivals such as the Hindu Diwali (festival of lights), or Eid al-Fitr (festival celebrating the end of Ramadan), which are not necessarily religious services but are reflective of religious practice.
- Proposed changes reflect gender neutral language.

16001.9(a)(13)(14)

To ~~attend school and~~ participate in extracurricular, cultural, racial, ethnic and personal enrichment activities, and social activities, including, but not limited to, access to computer technology and the internet, consistent with the child’s age, maturity, developmental level, and sexual orientation, gender identity and expression. ~~with minimal disruptions to school attendance and educational stability.~~

- The proposed changes remove references to education to preserve the focus on activities other than school. References to educations were moved to a proposed new paragraph Section 16001.9(a)(25), which specifically covers the rights of foster youth to an equal education.

- The proposed changes reflect the right of a foster child to participate in extracurricular activities that support the child's sense of community and identity, not only their age. Specific references to racial ethnic, sexual orientation and gender identity and expression were added to reflect the protections against discrimination based on any of these characteristics as reflected in the California Foster Care Non-Discrimination Act, (AB 458, Chapter 331, Statutes of 2004). The California Foster Care Non-Discrimination Act has been amended numerous times since then, to clarify and expand protections. Additional statutory citations to support this change include HSC Sections 1522.41(a)(1)(G), 1529.2, 1563; WIC Section 160013.
- The recommended changes reflect the provisions of AB 2448 (Chapter 997, Statutes of 2018) which amended WIC Sections 362.05 and 727 to ensure that foster children have access to computing technology and the internet.

16001.9(a)(~~23~~)(15)

To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity and expression, mental or physical disability, or HIV status.

- The recommended changes reflect updated, inclusive language regarding youth whose gender expression may be different from their sex or gender identity reflective of AB 2119 (Chapter 385, Statutes of 2018), the gender affirming health care bill, which uses the term "gender expression". That bill amended both WIC Section 16001.9 and WIC Section 16010.2 to include the term.

16001.9(a)(~~25~~)(16)

To have caregivers ~~and child welfare personnel~~ child welfare and/or probation personnel, and legal counsel who have received instruction on cultural competency and sensitivity relating to sexual orientation, gender identity and expression, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth children in out-of-home care.

- The recommended changes clarify that probation officers also must receive training on culturally competency and sensitivity and to add legal counsel pursuant to WIC Section 317(c)(5)(B).
- The recommended changes reflect that the training must be inclusive of sexual orientation, gender identities and expressions.

16001.9(a)(~~24~~)(17)

To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court, ~~or child welfare records.~~ child welfare, medical or vital records, to be referred to by the child's preferred name and gender pronoun, and to maintain privacy regarding sexual orientation, gender identity and expression, unless the child permits the information to be disclosed.

- The recommended changes more fully reflect the documents with which a child's sex is usually recorded.
- The recommended changes reflect the protections described in ACL 17-64, which implemented SB 731 (Chapter 805, Statutes of 2015), which enacted WIC Section 16006, and provides, "Children and nonminor dependents in out-of-home care shall be placed according to their gender identity, regardless of the gender or sex listed in their court or child welfare records"
- This recommendation is consistent with the Child Welfare League of America's best practices^{iv} for the placement of Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning (LGBTQ) foster youth.

16001.9(a)(18)

To have child welfare and/or probation personnel, and legal counsel who have received instruction on the Indian Child Welfare Act and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care."

- This recommended amendment reflects that knowledge of ICWA, including the historical trauma to indigenous people and their sovereign nations that led to its passage by Congress, is necessary for proper application of ICWA. Requiring child welfare and probation personnel and attorneys working in the child welfare system to have adequate legal and cultural competency on ICWA is critical to ensure that Indian children receive all the rights and protections to which they are entitled under the federal law.

16001.9(a)(19)

To have recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship in an Indian tribe or Alaskan village; to receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; to receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and to be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village.

- This recommended amendment reflects the rights of children under ICWA. ICWA protects tribal sovereignty by recognizing the political affiliations of children and their parents to their tribes. Its express purpose is to protect Indian children, who are the vital resource of the continued existence and integrity of Indian tribes, by creating minimum standards under which Indian children may be removed from parental custody and placed with nonparents, whether as foster children or for adoption per 25 U.S.C. § Section 1901, which sets forth the purpose of ICWA. The proposed amendment reflects not only that purpose, but also the children's right to preserve their own political relationship with their tribe.

16001.9(a)(4)(20)

To access and receive medical, dental, vision, and mental health, ~~services~~, substance use disorder services, and reproductive and sexual health care, with reasonable promptness that meets the needs of the child, to have diagnoses and services explained in an understandable manner, and to participate in decisions regarding healthcare treatment and services.

- (A) The right of minors and nonminors in foster care to health care and mental health care described in paragraph (20) of subdivision (a) of Section 16001.9 includes covered gender affirming health care and gender affirming mental health care. This right is subject to existing laws governing consent to health care for minors and nonminors and does not limit, add, or otherwise affect applicable laws governing consent to health care.
- (B) The right to view and receive a copy of their medical records to the extent the child has the right to consent to the treatment provided in the medical record.
- The recommended changes include the laws related to substance use disorder services as covered under the Early and Periodic Screening, Diagnosis and Treatment program as specified in Title XIX, Section 1905, of the Social Security Act.
 - The recommended changes include sexual/reproductive health.
 - The recommended changes include the right for services to be provided promptly, stemming from the recognition that foster youth sometimes face inappropriate delays in accessing needed care. This right is based in federal Medicaid law (42 U.S.C. § 1396(a)(8)).
 - The recommended changes clarify that providers must explain diagnoses and treatments in an understandable manner and that minors should participate in the decision-making regarding treatment and services as outlined in the American Medical Association (AMA) Code of Medical Ethics (Opinion 8.12 and 10.016).
 - The recommended changes reflect AB 2119 (Chapter 385, Statutes of 2018), which added WIC Section 16010.2. and amended WIC Section 16001.9(a) to create the right to gender-affirming health and mental health care.
 - The proposed changes reflect that youth have the right to their medical records related to procedures or treatment for which they can provide consent per HSC Section 123110.

16001.9(a)(5)(21)

Except in an emergency, to be free of the administration of medication or chemical substances, unless authorized by a physician, and to be free of all psychotropic medications unless prescribed by a physician and in the case of children, authorized by a judge. The child has the right to consult with and be represented by counsel in opposing a request for the administration of psychotropic medication, and to provide input to the court about the request to authorize medication. The child also has the right to report to the court the positive and/or adverse effects of the medication and to request that the court reconsider, revoke, or modify the authorization.

- The proposed changes reflect the existing law regarding administration of psychotropic medication to foster youth as enacted by SB 238 (Chapter 534, Statutes of 2015) and implemented via ACL 16-37, California Rules of Court Rule 5.640, and WIC Sections 369.5, 739.5; HSC Section 1507.6(b).

16001.9(a)(27)(22)

To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections ~~at 12 years of age or older.~~

(A) At any age, to consent or decline services regarding contraception, pregnancy and perinatal care, including abortion services and health care services for sexual assault without the knowledge or consent of any adult;

(B) At age 12 or older to consent or decline health care services to prevent, test or treat sexually transmitted diseases, including HIV, and mental health services without the consent or knowledge of any adult.

- The proposed changes reflect the provisions governing consent by minors for medical and mental health treatment outlined in Family Code Sections 6924-6929.
- The proposed changes include the sexual and reproductive health rights to meet the requirements of WIC Section 16501.1, which requires that social workers ensure foster youth, beginning at age 10, are educated about their sexual and reproductive health rights.

16001.9(a)(23)

To choose their own health care provider for medical, dental, vision, mental health, substance use disorder treatment and sexual and reproductive health, if payment for the health service is authorized under applicable Medicaid law or other approved insurance, and to communicate with that healthcare provider regarding any treatment concerns or needs and to request a second opinion before being required to undergo intrusive medical, dental, or psychiatric treatment.

- The recommended changes reflect existing rights described in statute in 42 U.S.C. § Section 1396a (to choose one's own health care provider) and California HSC Section 1385.15 (to request a second opinion). They also reflect that California operates under a Freedom of Choice waiver provided for in Section 1915(b) (1) of the Social Security Act (42 U.S.C. § 1396n, subd. (b)(1)) which permit it to create networks of medical care services providers and limit choice to providers within those networks if Medicaid dollars are paying for those services.
- The recommended changes also reflect best practice as provided by the AMA's Code of Medical Ethics, which indicates that "physicians should give pediatric patients the opportunity to participate in decision making at a developmentally appropriate level. The physician should seek the patient's assent, or agreement, by explaining the medical condition, its clinical implications, and the treatment plan in ways that take into account the child's cognitive and emotional maturity and social circumstances."
- The recommended changes include the medical rights of foster youth pursuant to WIC Section 16501.1, which requires that social workers provide youth with a document that describes their medical rights.

16001.9(a)(24)

To confidentiality of medical and mental health records, including HIV status, substance use disorder history and treatment, and sexual and reproductive health care, consistent with existing law.

- This recommended amendment reflects the right to confidentiality of medical and mental health records as described in 45 Code of Federal Regulations (CFR) Sections 164.502(a)(1), 164.506 and 164.508(a)(2).
- The recommended amendment also includes the medical rights of foster youth pursuant to WIC Section 16501.1(g)(18)(A), which requires that social workers provide youth with a document that describes their health rights.

16001.9(a)(25)

To attend school, to remain in the child's school of origin, to immediate enrollment upon a change of school, to partial credits for any coursework completed, and to priority enrollment in preschool, afterschool programs, and in California State Universities and in each community college district, and to receive all other necessary educational supports and benefits as described in Education Code.

- This recommended amendment summarizes the rights of foster youth found in Education Code and to meet the requirements of WIC Section 16501.1(g)(18)(A), which requires that social workers provide youth with a document that describes their education rights.
- This recommended amendment also reflects the priority enrollment given by the Legislature to foster children in preschool (Ed. Code 8236(a)(1)), afterschool programs (Ed. Code 8483(c), and California State University campuses and community college districts (Ed. Code 66025.9(a)).

16001.9(a)(26)

~~At age 16 or older to~~ To have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational career, technical and postsecondary educational programs, and information regarding financial aid for postsecondary education and specialized programs for current and former foster children available at California Community Colleges, the California State University and the University of California systems.

- The recommended changes remove the age restriction, as it is the belief of the work group that youth have the right to access this information at any age.
- The recommended changes reflect the current terminology of "career or technical" education in place of "vocational".
- The recommended changes add access to information about specialized programs available to foster youth on public college campuses in California.

16001.9(a)(~~16~~)(27)

To attend Independent Living Program classes and activities if ~~he or she meets~~ they meet age requirements and to not be prevented from attending by the caregiver as a consequence or punishment.

- This recommended change clarifies and strengthens the right that youth have to attend Independent Living Program Activities. In the stakeholder process, foster youth disclosed being prevented from attending Independent Living Program activities due to arbitrary restrictions from a foster parent or group home staff.
- The recommended change reflects gender neutral language.

16001.9(a)(~~11~~)(28)

To maintain an ~~emancipation~~ a bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

- This recommended change reflects that most banks no longer offer specific emancipation bank accounts.

16001.9(a)(~~14~~)(29)

To work and develop job skills at an age-appropriate level, consistent with state law.

- No recommended changes to existing language.

16001.9(a)(30)

For children 14-17 years of age, to receive a consumer credit report provided to the child by the social worker or probation officer on an annual basis from each of the three major credit reporting agencies, and to receive assistance with interpreting and resolving any inaccuracies.

- The recommended changes include the credit reporting requirements that social workers provide youth with a document that describes their rights to review and receive assistance with their credit report on an annual basis (WIC 16501.1(g)(18)(A)).

16001.9(a)(31)

To be represented by an attorney in juvenile court, to have an attorney appointed to represent the child's wishes, to advocate for their protection, safety and well-being and to investigate and report to the court on legal interests beyond the scope of the juvenile proceeding, to speak to the attorney confidentially, and to request a hearing if the child feels their appointed counsel is not acting in their best interest or adequately representing their legal interests.

- The recommended changes include the requirements of WIC Section 16501.1(g)(18)(A), which requires that social workers provide youth with a document that describes their rights in court and other court related rights as described in WIC Section 317 and in the court ruling *People v. Marsden* (1970) 2 Cal.3d 118.

16001.9(a)(17)(32)

To receive a notice of court hearings, to attend court hearings, and to speak to the judge, to view and receive a copy of the court file, and to object to and/or request the presence of interested persons during court hearings. If the child is an Indian child, to have a representative designated by the child's Tribe be in attendance during hearings.

- The recommended changes more completely reflect the rights that foster youth have when attending court, pursuant to WIC Section 346 and Section 349 and California Rules of Court.
- The recommended changes include the requirement of WIC Section 16501.1(g)(18)(A), that social workers provide youth with a document that describes their rights in court.
- The recommended changes add an express recognition of an Indian child's right to have a tribal representative be present in court under ICWA.

16001.9(a)(22)(33)

To the confidentiality of all juvenile court records consistent with existing law.

- No recommended changes to existing language.

16001.9(a)(34)

To view and receive a copy of their child welfare records, juvenile court records, and educational records.

- This recommended amendment reflects a foster child's right to their child welfare records and juvenile court records pursuant to WIC Section 827.
- This recommended amendment also reflects the right to educational records per the federal Family Education Rights and Privacy Act (20 U.S.C. 1232g).

16001.9(a)(19)(35)

To be involved in the development of ~~his or her own~~ their case plan, including placement decisions, and plan for permanent placement, permanency. This involvement includes, but is not limited to, the development of case plan elements related to placement and gender affirming health care, with consideration of their gender identity. If the child is an Indian child, the case plan shall include protecting the essential Tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and maintaining political, cultural, and social relationships with the child's Tribe and Indian community.

- The recommended changes reflect right for youth to be involved in decisions related to preference for placement as well as their plan for permanency. Additionally, the right of the youth to receive notice of placement changes and provide their opinion on placement is provided in WIC Sections 361.2(f)(3)(G) and 16010.7.

- The recommended changes include gender affirming health care reflected in AB 2119 (Chapter 385, Statutes of 2018), which added WIC Section 16010.2. and amended WIC Section 16001.9(a).
- The recommended changes reflect gender neutral language.
- The recommended changes reflect ICWA and state law requirements for maintaining an Indian child's relationship with their Tribe and greater Indian community.

16001.9(a)(20)(36)

To review ~~his or her~~ their own case plan and plan for permanent placement if ~~he or she is 12~~ they are 10 years of age or older, ~~and in a permanent placement~~, and to receive information about ~~his or her~~ their out-of-home placement and case plan, including being told of changes to the plan.

- The recommended changes reflect gender neutral language.
- The recommended changes lower the age for participation in case-planning activities. Although WIC Section 16501.1(f)(13) does not mandate that children be entitled to participate in those activities until age 12, WIC Section 349 gives children the right to be present in court and to participate in their hearings. Moreover, when a child is age 10 or older and not present for their court hearing, the court must make findings that the child received notice and was aware of their opportunity to be present for and participate in the hearing and chose not to be present. In order for children to participate meaningfully in their court hearings, they would have to have participated in the development of their case plan. The work group believes they have a right to participate in case-planning activities at the same age as their right to participate in their court proceeding.
- The recommended changes remove "in a permanent placement" consistent with the implementation of CCR, whereas children should be engaged throughout the time they are in foster care in case planning and placement, rather than waiting until a youth is in a permanent placement, which could be years after entering foster care.

16001.9(a)(37)

(37) To request and participate in a Child and Family Team meeting:

(A) within 60 days of entering foster care and every 6 months thereafter,

(B) if placed in a Short Term Residential Therapeutic Program, or receiving Intensive Home-Based Services, Intensive Case Coordination, or receiving Therapeutic Foster Care to have a CFT at least every 90 days,

(C) to request additional Child and Family Team meetings to address concerns including, but not limited to, placement disruption, change in service needs, addressing barriers to sibling or family visits, addressing difficulties in coordinating services, and

(D) to have both informal and formal support people participate in a CFT as allowed by state law.

- The recommended changes reflect requirements of Child and Family Team (CFT) meetings as a core element of CCR, clarify the timelines for CFTs, and include the right of the youth to both request and participate, pursuant to WIC Sections 16501.1 and 16501(a)(4)(B).

16001.9(a)(38)

To be informed of these rights in an age and developmentally appropriate manner by the social worker or probation officer and to be provided a copy of the rights in this section at the time of placement, any placement change, and at least once every six months, at the time of a regularly scheduled contact with the social worker or probation officer.

- This recommended amendment reflects the right of foster youth to be informed of rights on a regular basis per WIC Section 16501.1(g)(4).

16001.9 ~~(8)~~(39)

To ~~contact~~ be provided with contact information for the Community Care Licensing Division of the State Department of Social Services, the tribal authority approving a tribally approved home, or and the State Foster Care Ombudsperson, at the time of each placement, and to contact any or all of these offices regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

- This recommended change reflects stakeholder feedback to clarify that this contact information shall be provided to the youth at least at the time of each placement.

16001.9(b)

These rights described herein are broad expressions of the rights of children in foster care and not exhaustive of all rights set forth in the United States Constitution and the California Constitution, federal and California statutes, and case law of the federal courts and the Supreme Court and Court of Appeal of the State of California.

- This recommended change insures that children are not deprived of any right solely because it is not expressly included in the FYBR.

16001.9 ~~(b)~~(c)

~~Nothing in this section shall~~ This section does not require and shall not be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

- This recommended change reflects AB 2119 (Chapter 385, Statutes of 2018), which amended WIC Section 16001.9(b) to clarify that no rights listed shall require a child be harmed or made unsafe, otherwise it remains the same language as in the original provision.

16001.9(c)(d)

The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (26) of subdivision (a).

- This provision is unchanged, but it is a new subdivision.

RECOMMENDATIONS FOR DISSEMINATING BILL OF RIGHTS

The most common method of disseminating foster youth rights is using brochures or posters entitled, “Know Your Rights” or “You Have Rights, Too!” In focus groups and interviews with approximately 200 youth, OFCO found that 97 percent of youth are unaware of their rights, and only three percent were aware they had specific rights but had limited knowledge on the full scope of their rights. Additionally, interviews and focus groups with caregivers and group home personnel revealed that they are also often unaware of foster youth rights. The working group recommends that OFCO develop updated and revised materials for specific populations, available in a variety of print and online mediums, and to include training in the scope and role of the statewide Ombudsperson.

The working group recognizes the ongoing need to review state law and keep the FYBR updated. The working group recommends that the Legislature amend WIC Section 16164(a)(1) to add a requirement that, at the end of each two-year legislative session, OFCO review bills passed in that session and recommend updates to WIC Section 16001.9 or make any necessary changes to print and online publications and training materials. See attachment C for specific language.

Specialized Publications

Both youth and caregivers expressed the need for audience specific materials, available in a variety of mediums, both in print and online. Age-specific and specialized publications should be developed to meet the needs of all youth in foster care. See attachment B for a full description of the dissemination publication recommendations.

For ages birth to five, develop a simple, short and colorful FYBR book, such as a board book, targeting caregivers. It would assist caregivers in talking with young children about the rights and could be read to toddlers and preschoolers.

The second age-based publication would target school age children ages six to eleven in the form of an interactive book to explain the rights using visual aids, games, activities, comic strips, and short stories to help explain foster youth rights to elementary-school aged children in an engaging and age-appropriate fashion.

The third age-based publication would be for 12 to 17-year old’s in the form of a comprehensive handbook. Each right will be explained and include the responsibilities of the youth, the responsibilities of the caregiver, and responsibilities of the social worker consistent with state law. The rights will be demonstrated using vignettes, foster youth profiles, advocacy tips, infograms and links to resources, a section where the youth can record important contacts, a

county customizable page, and a signature page to document that the youth has had their rights explained to them. This document would be the first priority for specialized publications as social workers are required by existing law to review these rights with a youth beginning at age 14.

The last age-based publication would be for 18-21-year old's also in the form of a comprehensive handbook, similar to the publication for twelve to seventeen-year olds previously described, but with specific information for nonminor dependents.

The working group recommends that specialized rights publications be developed for four additional categories of experience. A publication should be developed through formal consultation with Tribes in California reflective of ICWA for Indian children in foster care.

A recent study by the Williams Institute^v found that the proportion of youth in child welfare who identify as Lesbian, Gay, Bisexual, (LGB) is nearly double that of the LGB youth in the overall population. In 2005 there was an LGBTQ Know your rights brochure developed in response to AB 458 (Chapter 331, Statutes of 2004), The Foster Care Nondiscrimination Act, in collaboration with OFCO, CYC, and National Center for Lesbian Rights. There is a need for an updated or new publication that specifically addresses the rights for LGBTQ foster youth. Specialized publications also should be developed for targeted outreach to youth who experience being trafficked or commercially sexually exploited. The working group also requested a specialized publication for "cross-over youth" or those youth who cross over from the dependency system to the delinquency system or are under dual jurisdiction of child welfare and juvenile probation.

Print Publications

Rights materials must be created in a variety of printed formats and made available through OFCO in hard copies and in digital downloadable formats. At a minimum, the stakeholder working group recommends that in addition to the specialized publications described previously, that a poster, brochure, and a foldable wallet size version of the FYBR be developed and disseminated.

Per 22 CCR Section 84072(a) and HSC Section 1530.91(b), any facility licensed to provide foster care for six or more children is required to post a listing of a foster child's rights specified in Section 16001.9 of the WIC. Focus group data and visits to congregate care facilities revealed that licensed facilities inconsistently used age and developmentally appropriate postings of the FYBR. Some facilities used the FYBR poster made available for free through OFCO while others printed the law directly from WIC Section 16001.9, where the rights were printed in small format and did not include the phone number for the Ombudsperson.

The working group recommends that the California State Legislature amend WIC Section 16164(d)(2) (see attachment C) and HSC Section 1530.91(b) (see Attachment D) to require that social workers use the publications from OFCO to inform youth of their rights and require all licensed STRTP's, group homes, and shelters to use and post the FYBR poster created by OFCO. Requiring agencies and social workers to use OFCO materials will permit OFCO to track material requests, thereby meeting the Legislature's request to measure the degree to which information is disseminated. It will also ensure that youth receive consistent and complete explanations of their rights.

Digital Mediums

In today's world, most people across the age span use the internet and online mediums to learn, communicate, and interact. The working group recognizes this and recommends that the Legislature support OFCO to be resourced to expand the online options available to foster youth and caregivers.

The working group recommends that OFCO update its website to include more dynamic features to help explain the foster youth rights and other information, including links to resources, videos and games and include a portal to the Youth Satisfaction Survey administered by CDSS' CCR Branch. There should also be a section designed to provide information and guidance to caregivers, including Caregiver and Biological Parent Resources such as the Resource Family Approval toolkit, Quality Parenting Initiative Resources, caregiver trainings, and links to other relevant resources. The website shall have information regarding the foster youth rights, including policy guidance such as ACLs and All County Information Notices (ACINs). This section will include links to print-ready versions of all OFCO publications, links to OFCO social media sites and other recommended resources, and links to OFCO Annual Reports. Online versions of print materials will be made available and should meet accessibility standards.

During focus groups, youth repeatedly expressed an interest for their rights to be presented in a video format, such as a YouTube Channel featuring videos recorded for current foster youth by former foster youth on rights and services and be made available through the OFCO website. It is therefore also recommended that pre-recorded Rights videos, webinars and digital media, and interactive trainings be designed for various audiences on the Foster Youth Rights and the Reasonable and Prudent Parent Standards.

Training

Youth, caregivers, and stakeholders agree that training about foster youth rights must be considered as a key dissemination strategy. Adequate training for youth, caregivers, social workers and probation officers about the FYBR is necessary to ensure the safety, well-being, and permanence of youth in foster care.

Since its inception, OFCO has provided trainings across the state as resources allowed. It receives hundreds of requests each year for training. OFCO has found that many youth, caregivers and social workers are unaware of the existence and role of OFCO. This indicates that nearly two decades of publicizing the office via brochures and posters have not been effective in ensuring that foster youth and their service providers are aware of foster youth rights. The working group strongly believes that a more robust outreach campaign, including regular in-person trainings, would help increase awareness of foster youth rights and the role of the Ombudsperson.

Additionally, OFCO is responsible under the current U.S. Department of Health and Human Services' Administration for Children and Families' Program Improvement Plan (PIP) to improve awareness of and adherence to Reasonable and Prudent Parenting Standards statewide. The PIP indicates that this will be done via increased in-person trainings and technical assistance. It would be beneficial for the purposes of the federal PIP to incorporate training into OFCO's formal statutory authority.

The working group recommends that the Legislature amend WIC Section 16164(a)(1)(A) to read:

(a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) (A) Disseminate information and provide training and technical assistance to foster youth, social workers, probations officers, Tribes' child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties on the rights of children and youth in foster care, reasonable and prudent parent standards, and the services provided by the office. The rights of children and youths in foster care are listed in Section 16001.9. The information shall include methods of contacting the office and notification that conversations with the office may be disclosed to other persons as necessary to adequately investigate and resolve a complaint ~~not be confidential.~~

RECOMMENDATIONS FOR MEASURING THE DEGREE TO WHICH YOUTH ARE INFORMED OF THEIR RIGHTS

AB 1067 requires the development of recommendations to measure and improve the degree to which youth are informed of their rights. The working group recommends the Legislature adopt and fund the following recommendations:

CARES Case Management System

CDSS is currently developing the Child Welfare System – California Automated Response and Engagement System (CARES), a new statewide Child Welfare database to replace the current statewide Child Welfare Services Case Management System (CWS/CMS). OFCO is working with CDSS' Information Services Division and Office of Systems Integration (OSI) to develop data fields in the new CARES database that will track the date that a social worker informs youth of their rights. The CARES system will be able to generate a reminder if a youth in care has gone more than six months without a documented foster youth rights contact. CARES will have the capability for the social worker to upload the signed form indicating that a youth has been educated regarding their rights and an electronic portal for the youth to confirm this information in CARES.

Requiring Documentation in Court Reports

The working group recommends that the Legislature amend WIC Section 16501.1(g)(4) to require that social workers report to the court that they have reviewed the foster youth rights with the youth if the youth is of age and include a copy of the signed form as an attachment for the court's review.

SafeMeasures

SafeMeasures is a software package, which among other things, allows county staff, including individual workers, to track their case-plan compliance with various state and federal measures and compare their statistics to other workers, regional offices or counties. If information on foster youth rights were included in CARES, this would allow for the generation of compliance reports on SafeMeasures.

California Child and Family Service Review

The Outcomes and Accountability Bureau (OAB) in CDSS currently performs random case reviews from each county to measure compliance with various state and federal measures. The working group recommends adding whether or not the youth was appropriately informed of their rights to the state measures that are tracked and overseen by OAB.

Surveys

The phone system utilized by OFCO has the option to include a survey at the end of a call.

By using this feature, OFCO can request that foster youth to take a brief survey, which would include whether or not they had been informed of their rights.

ADDITIONAL RECOMMENDATIONS TO THE LEGISLATURE FOR STATUTORY AMENDMENTS

The working group recommends making changes to WIC Section 16164 and HSC Section 1530.91 to enhance and increase the safety, permanency and wellbeing of youth involved in the California foster care system and to clarify the role of OFCO in ensuring the safety, permanence, and wellbeing of youth in foster care. The following recommendations include the rationale and the proposed language and changes can be found in Attachments C and D.

1) Amend WIC Section 16501.1(g)(18) to amend age requirement from 14 to 10 years of age.

A number of important rights for foster youth begin at age 10 or 12. At age 10, the child has the right to begin receiving notice of court hearings and is entitled to be present at court hearings (WIC 290.1, WIC 290.2 and WIC 349(a)). Additionally, a social worker is required to ensure that a foster youth has access to age-appropriate, medically accurate information about reproductive health care beginning at age 10 (WIC 16501.1 (g)(20)). By age 12, the youth has the right to consent to sexual and reproductive care, substance abuse treatment and mental health treatment without adult consent or knowledge (Family Code 6925-6929). The working group recommends that existing law be changed to compel social workers/probation officers to provide an age and developmentally appropriate explanation of rights beginning at age 10. See proposed language in Attachment C.

2) Create a separate FYBR for Nonminor Dependents.

Youth who are enrolled in Extended Foster Care (AB 12, Chapter 559, Statutes of 2010) are young adults between the ages of 18 and 21 who remain dependents of the court in order to receive supportive transition services. As these individuals are legal adults who remain wards of the court, a document that recognizes their particular rights would be beneficial to both nonminor dependents and those who work with this age group.

3) Amend WIC Section 16164(a)(7) and WIC Section 16164(a)(8) to require that OFCO receive data from the California Department of Education (CDE) on complaints regarding violations of foster youth education rights.

Receiving this information from CDE will permit a more accurate reporting of the educational rights violations impacting foster youth. OFCO can include this data in reports to the Legislature for improving the child welfare system based on the issues and trends identified in the annual report.

4) Amend WIC Section 16164(a)(8)(A) to count all contacts made to OFCO.

Currently, the law requires that OFCO produce an annual report to the Legislature including the number of contacts made to the toll-free telephone number. Over time and as new technologies have emerged, the methods of contacting OFCO have changed. The working group therefore recommends that all contact be counted and reported, not just those contacts to the toll-free number. See Attachment C for proposed language.

5) Amend WIC Section 16164(a)(8)(B) to include probation officers, Tribes and child welfare agencies to the list of people who OFCO should include in presenting the annual report findings.

The working group recommends adding Tribes to reflect their importance in Indian child welfare proceedings. It was recommended that CPOC be added as it is the equivalent association to CWDA for probation officers and the bill of rights applies to youth on probation who are placed in out of home care. (See Attachment C for proposed language).

6) Add WIC Code Section 16164(a)(9)

The working group recommends adding this subsection to clarify OFCO's role in accessing information to adequately investigate complaints about the violations of rights of children in foster care.

7) Add WIC Section 16164(a)(10)(A-D).

The working group recommends changing this subsection to clarify confidentiality of complaints, to clarify the ombudsperson's role in providing training and technical assistance to county based ombudspeople, to clarify that counties shall use the foster youth rights publications produced by OFCO to educate youth about their rights, and to measure the distribution of rights materials.

ATTACHMENT A: RECOMMENDED LANGUAGE FOR CALIFORNIA WELFARE AND INSTITUTIONS CODE 16001.9 FOSTER YOUTH BILL OF RIGHTS

16001.9.

(a) It is the policy of the state that all children placed in foster care, either voluntarily or pursuant to Section 300 and Section 600 and following, shall have the rights contained in this section. These rights also apply to nonminor dependents in foster care except where they conflict with nonminor dependents' retention of all their legal decision-making authority as an adult. The rights are as follows:

(1) To live in a safe, healthy, and comfortable home where ~~he or she is~~ they are treated with respect. If the child is an Indian child, to live in a home that upholds the prevailing social and cultural standards of the child's Indian community, including, but not limited to, family, social or political ties.

(2) To be free from physical, sexual, emotional, or other abuse, ~~or~~ corporal punishment and to be free from exploitation.

(3) To receive adequate and healthy food, adequate clothing, grooming and hygiene products and, ~~for youth in group homes,~~ an age-appropriate allowance. Clothing, grooming and hygiene products shall respect the child's culture, ethnicity, and gender identity and expression.

(4) To not be locked in ~~a room, building or facility premises,~~ in any portion of one's foster care placement, unless placed in a community treatment facility.

(5) To have a placement that utilizes trauma-informed and evidence-based de-escalation and intervention techniques and to have law enforcement intervention requested only when there is an imminent threat to the life or safety of a child or another person or as a last resort after other diversion and de-escalation techniques have been utilized. To not have law enforcement intervention used as a threat or in retaliation against the minor or nonminor.

(6) To not be detained in a juvenile detention facility, based on status as a dependent of the court or the child welfare services department's inability to provide a foster care placement. If detained, to have all the rights afforded under the Constitution of the United States, the Constitution of California and all applicable state and federal laws.

(7) To have storage space for private use.

(8) To be free from unreasonable searches of personal belongings.

(9) To ~~contact family members, unless prohibited by court order, and to~~ be provided the names and contact information for social workers and/or probation officers, attorneys, service providers, foster youth advocates and supporters, Court Appointed Special Advocates (CASAs), and Education Rights Holder, if other than the parent or parents, and when applicable, representative(s) designated by the youth's Tribe to participate in the juvenile court proceeding, and to ~~contact~~ communicate with these individuals privately. ~~probation officers.~~

(10) To visit and contact ~~brothers and sisters~~ siblings, family members, and relatives privately, unless prohibited by court order, and to ask the court for visitation with the child's siblings.

(11) To make, send and receive confidential telephone calls, other electronic communications, and send and receive unopened mail, unless prohibited by court order.

(12) To have social contacts with people outside of the foster care system, including but not limited to teachers, coaches, ~~church~~ religious or spiritual community members, mentors, and friends. If the child is an Indian child, they have the right to have contact with tribal members and members of the child's Indian community consistent with the prevailing social and cultural conditions and way of life of the Indian child's Tribe.

(13) To attend religious services, and activities and ceremonies of his or her the child's choice, including engaging in traditional Native American religious practices.

(14) To ~~attend school and~~ participate in extracurricular, cultural, racial, ethnic, personal enrichment, and social activities, including, but not limited to, access to computer technology and the internet, consistent with the child's age, maturity, developmental level, and sexual orientation, gender identity and expression. with minimal disruptions to school attendance and educational stability.

(15) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity and expression, mental or physical disability, or HIV status.

(16) To have caregivers and ~~child welfare personnel~~ child welfare and/or probation personnel, and legal counsel who have received instruction on cultural competency and sensitivity relating to sexual orientation, gender identity and expression, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth children in out-of-home care.

(17) To be placed in out-of-home care according to their gender identity, regardless of the gender or sex listed in their court, ~~or child welfare records.~~ child welfare, medical or vital records, to be referred to by the youth's preferred name and gender pronoun, and to maintain privacy regarding lesbian, gay, bisexual or transgender status sexual orientation, gender identity and expression, unless the child permits the information to be disclosed.

(18) To have child welfare and probation personnel, and legal counsel who have received instruction on the Indian Child Welfare Act and on cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care.

(19) To have recognition of the child's political affiliation with an Indian tribe or Alaskan village, including a determination of the child's membership or citizenship in an Indian tribe or Alaskan village; to receive assistance in becoming a member of an Indian tribe or Alaskan village in which the child is eligible for membership or citizenship; to receive all benefits and privileges that flow from membership or citizenship in an Indian tribe or Alaskan village; and to be free from discrimination based on the child's political affiliation with an Indian tribe or Alaskan village.

(20) To access and receive medical, dental, vision, and mental health, ~~services.~~ substance use disorder services, and reproductive and sexual health care, with reasonable promptness that

meets the needs of the child, to have diagnoses and services explained in an understandable manner, and to participate in decisions regarding healthcare treatment and services.

(A) The right of minors and nonminors in foster care to health care and mental health care described in paragraph (20) of subdivision (a) of Section 16001.9 includes covered gender affirming health care and gender affirming mental health care. This right is subject to existing laws governing consent to health care for minors and nonminors and does not limit, add, or otherwise affect applicable laws governing consent to health care.

(B) The right to view and receive a copy of their medical records to the extent the child has the right to consent to the treatment provided in the medical record.

(21) Except in an emergency, to ~~To~~ be free of the administration of medication or chemical substances, ~~unless authorized by a physician.~~ and, to be free of all psychotropic medications unless prescribed by a physician, and in the case of children, authorized by a judge. The child has the right to consult with and be represented by counsel in opposing a request for the administration of psychotropic medication, and to provide input to the court about the request to authorize medication. The child also has the right to report to the court the positive and/or adverse effects of the medication and to request that the court reconsider, revoke, or modify the authorization at any time.

(22) To have access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections ~~at 12 years of age or older.~~

(A) At any age, to consent or decline services regarding contraception, pregnancy and perinatal care, including abortion services and health care services for sexual assault without the knowledge or consent of any adult;

(B) At age 12 or older to consent or decline health care services to prevent, test or treat sexually transmitted diseases, including HIV, and mental health services without the consent or knowledge of any adult.

(23) To choose their own health care provider for medical, dental, vision, mental health, substance use disorder treatment and sexual and reproductive health, if payment for the health service is authorized under applicable Medicaid law or other approved insurance, and to communicate with that healthcare provider regarding any treatment concerns or needs and to request a second opinion before being required to undergo intrusive medical, dental, or psychiatric treatment.

(24) To confidentiality of medical and mental health records, including HIV status, substance use disorder history and treatment, and sexual and reproductive health care, consistent with existing law.

(25) To attend school, to remain in the child's school of origin, to immediate enrollment upon a change of school, to partial credits for any coursework completed, and to priority enrollment in preschool, afterschool programs and in California State Universities and in each community college district, and to receive all other necessary educational supports and benefits as described in Education Code.

(26) At 16 years of age or older, to have access to existing information regarding the educational options available, including, but not limited to, the coursework necessary for vocational career, technical and postsecondary educational programs, and information regarding financial aid for postsecondary education, and specialized programs for current and former foster children available at California Community Colleges, the California State University and the University of California Systems.

(27) To attend Independent Living Program classes and activities if he or she meets the child meets the age requirements and cannot be prevented by caregivers from attending as a consequence or punishment.

(28) To maintain an emancipation a bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.

(29) To work and develop job skills at an age-appropriate level, consistent with state law.

(30) For children 14-17 years of age, to receive a consumer credit report provided to the child by the social worker or probation officer on an annual basis from each of the three major credit reporting agencies, and to receive assistance with interpreting and resolving any inaccuracies.

(31) To be represented by an attorney in juvenile court, to have an attorney appointed to represent the child's wishes, to advocate for their protection, safety and well-being and to investigate and report to the court on legal interests beyond the scope of the juvenile proceeding, to speak to the attorney confidentially, and to request a hearing if the child feels their appointed counsel is not acting in their best interest or adequately representing their legal interests.

(32) To receive a notice of court hearings, to attend court hearings, and to speak to the judge, to view and receive a copy of the court file, and to object to and/or request the presence of interested persons during court hearings. If the child is an Indian child, to have a representative designated by the child's Tribe be in attendance during hearings.

(33) To the confidentiality of all juvenile court records consistent with existing law.

(34) To view and receive a copy of their child welfare records, juvenile court records, educational records.

(35) To be involved in the development of his or her own their case plan, including placement decisions, and plan for permanent placement, permanency. This involvement includes, but is not limited to, the development of case plan elements related to placement and gender affirming health care, with consideration of their gender identity. If the child is an Indian child, the case plan shall include protecting the essential Tribal relations and best interests of the Indian child by assisting the child in establishing, developing, and maintaining political, cultural, and social relationships with the child's Tribe and Indian community.

(36) To review his or her their own case plan and plan for permanent placement if he or she is 12 they are 10 years of age or older, and in a permanent placement, and to receive information about his or her their out-of-home placement and case plan, including being told of changes to the plan.

(37) To request and participate in a Child and Family Team meeting:

(A) within 60 days of entering foster care and every 6 months thereafter.

(B) if placed in a Short Term Residential Therapeutic Program, or receiving Intensive Home-Based Services, Intensive Case Coordination, or receiving Therapeutic Foster Care to have a CFT meeting at least every 90 days.

(C) to request additional CFT meetings to address concerns including, but not limited to, placement disruption, change in service needs, addressing barriers to sibling or family visits, addressing difficulties in coordinating services, and

(D) to have both informal and formal support people participate consistent with state law.

(38) To be informed of these rights in an age and developmentally appropriate manner by the social worker or probation officer and to be provided a copy of the rights in this section at the time of placement, any placement change, and at least once every six months, at the time of a regularly scheduled contact with the social worker or probation officer.

(39) To ~~contact~~ be provided with contact information for the Community Care Licensing Division of the State Department of Social Services, the tribal authority approving a tribally approved home, or and the State Foster Care Ombudsperson, at the time of each placement, and to contact any or all of these offices regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.

(b) These rights described herein are broad expressions of the rights of youth in foster care and not exhaustive of all rights set forth in the United States Constitution and the California Constitution, federal and California statutes, and case law of the federal courts and the Supreme Court and Court of Appeal of the State of California.

(c) ~~Nothing in this section shall~~ This section does not require and shall not be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

(d) The State Department of Social Services and each county welfare department are encouraged to work with the Student Aid Commission, the University of California, the California State University, and the California Community Colleges to receive information pursuant to paragraph (24) of subdivision (a).

ATTACHMENT B: DISSEMINATION & STANDARDIZED RIGHTS MATERIALS

Standardized Materials Recommendations

Age-Based Publications: Develop and disseminate four age-specific rights publications

- 0-5 years: FYBR Handbook targeting caregivers that can be read to foster youth, such as a board book.
- 6-11 years: Interactive Handbook with rights written at a second grade reading level and includes coloring activities, comic strips, short stories, games/puzzles, pictures etc. The interactive handbook will include an age and developmentally appropriate section on reproductive health per WIC Section 16501.1(g)(21)(A-B)
- 12-17 years: Handbook organized by topic where each right is written in youth-friendly language and at fifth grade reading level. Each right will include the responsibilities of the youth, the caregiver, and the social worker as well as some artifact to bring it to life (e.g., vignette, real foster youth profile, advocacy tips, infograms, links to resources).
 - Example Handbook Contents:
 - Introduction
 - Table of Contents
 - Introduction to Child Welfare System
 - FYBR (WIC Section 16001.9)
 - Positive Self Advocacy to resolve complaints
 - All Rights organized by theme/topic
 - Frequently Asked Questions
 - Definitions
 - County Customizable Page
 - Important contacts
 - Signature Page
 - Appendix
 - Citations
- 18-21 years: Handbook organized as described above but with a specific focus on nonminor dependents.

Specialized Publications:

- ICWA Publication developed in consultation with California Tribes
- LGBTQ Publication
- CSEC Publication
- Cross-over youth Publication

Print Formats:

- Posters
- Comprehensive Handbook
- Foldable (wallet size)
- Coloring books/Comic books/Board Books

Dissemination Recommendations

- All documents will be made available online in a mobile friendly and accessible format and PDF.
- Online versions can be more interactive and include more links (e.g., allows for immediate changes where print does not, meets Americans with Disability Act accessibility standards) and additional examples, artifacts, and interactive features.
- Develop a Know Your Rights Application for phones and tablets.
- Develop a YouTube Channel where videos recorded for current youth by former foster youth (approved by OFCO) on rights and services for foster youth.
- Consistently update the OFCO website to consistently promote it as the key place for disseminating standardized information and needs to be updated and organized for ease of access. The website may be structured as follows:
 - Five tabs:
 - Youth Tab will have rights and other relevant resources for foster youth and can include other more dynamic features including links, videos, games, surveys, etc. OFCO will create short videos about rights and posting them to YouTube Channel of which a link will be on homepage.
 - Caregivers Tab will include the following: FYBR and RPPS materials; Caregiver and Bio Parent Resources (e.g., Caregivers and the courts, Resource Family Approval Toolkit; Parent's Guide to Child welfare; Quality Parenting Initiative resources); and other useful and important resources.
 - Rights and Resources Tab will have all the rights information in one place in addition to other relevant resources organized by topic. All annual reports will also be housed under this tab.
 - Complaints Tab will include an accessible portal to submit online complaints that are integrated into the OFCO Case Management database; information about OFCO authority and scope; information about complaint and investigation process; and other places and avenues that people can file complaints that are outside of OFCO jurisdiction.
 - Training Portal Tab will include how to request a training about FYBR or Reasonable and Prudent Parent Standards. It will also include the following:
 - Collection of pre-recorded Rights videos, webinars, and digital media.
 - Interactive Rights Trainings that are tailored to various audiences with certificate at end pending completion.
 - Rights Training Curriculum that is open source for easy use and implementation.
- Make additional statutory changes to WIC Section 16164 and HSC Section 1530.91 clarifying the role of OFCO in disseminating and training the rights of foster youth and the reasonable and prudent parent standards.

ATTACHMENT C: RECOMMENDED LANGUAGE FOR WELFARE AND INSTITUTIONS CODE 16164

(a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) (A) Disseminate information and provide training and technical assistance to foster youth, social workers, probations officers, Tribes' child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties on the rights of children and youth in foster care, reasonable and prudent parent standards, and the services provided by the office. The rights of children and youths in foster care are listed in Section 16001.9. The information shall include methods of contacting the office and notification that conversations with the office may be disclosed to other persons as necessary to adequately investigate and resolve a complaint. ~~Not be confidential.~~

(B) At the end of every two-year legislative session, review amendments to the laws applicable to foster youth and determine whether updates to the rights listed in Section 16001.9 should be recommended in the compilation prepared pursuant to subdivision (a)(8). The office shall update the standardized information prepared pursuant to subdivision (d)(1), and any training materials prepared pursuant to subparagraph (A), in accordance with the legislative review.

(2) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) Receive data from the California Department of Education regarding complaints about foster youth education rights made through the Uniform Complaint Process.

~~(7)~~ (8)

(A) Compile and make available to the Legislature all data collected over the course of the year including, but not limited to, the number of contacts to the office, ~~to the toll-free telephone number~~, the number of complaints made, including the type and source of

those complaints, the number of investigations performed by the office, the trends and issues that arose in the course of investigating complaints, the number of referrals made, ~~and~~ the number of pending complaints, and summary of the data received from the California Department of Education as described in subdivision (a)(7). The office shall include recommendations consistent with this data for improving the child welfare system.

(B) Present this compiled data, on an annual basis, at appropriate child welfare conferences, forums, and other events, as determined by the department, that may include presentations to, but are not limited to, representatives of the Legislature, the County Welfare Directors Association, Chief Probation Officers of California, Tribes, child welfare agencies, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties.

(C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system.

(D) The compiled data shall be posted so that it is available to the public on the existing website of the ~~State Foster Care Ombudsperson~~ office.

(E) Nothing shall preclude the office from issuing data, findings, or reports other than the annual compilation of data described above.

~~(8)~~ (9) Have access to and copies of any record of a state or local agency, and contractors with state and local agencies, that is necessary to carry out his or her responsibilities, and may meet or communicate with any foster child in his or her placement or elsewhere.

(10) Information obtained by the office from a complaint, regardless whether it is investigated by the office, referred to another entity for investigation, or determined not to be the proper subject of an investigation, shall remain confidential under the provisions of this Code and all other state and federal confidentiality laws. Disclosure of information shall occur only as necessary to carry out the mission of the office and as permitted by law.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) The office shall provide administrative and technical assistance to county, regional or local foster care ombudsperson's offices, including but not limited to, assistance in developing policies and procedures consistent with the policies and procedures used by the office.

~~(c)~~-(d)

(1) When updating the standardized information pursuant to subdivision (a)(1)(B), the ~~The office shall consider input from~~ the California Welfare Directors Association, Chief Probation Officers of California, Indian tribes located in the State of California, foster youth advocate and support groups, groups representing children, families, foster parents, children's facilities, and other interested parties, ~~shall develop, no later than July 1, 2002, standardized information explaining the rights specified in Section 16001.9.~~ The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers' responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others shall ~~may~~ use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.

(3) The office shall measure the distribution of the standardized materials for purposes of evaluating and improving the degree to which foster youth are adequately informed of their rights. This data shall be included in the compilation prepared pursuant to subdivision (a)(8).

ATTACHMENT D: RECOMMENDED LANGUAGE FOR HEALTH AND SAFETY CODE 1530.91

(a) Except as provided in subdivision (b) any care provider that provides foster care for children pursuant to this chapter shall provide each school age child and his or her authorized representative, as defined in regulations adopted by the department, who is placed in foster care, with an age and developmentally appropriate orientation that includes an explanation of the rights of the child, as specified in Section 16001.9 of the Welfare and Institutions Code, and addresses the child's questions and concerns.

(b) Any facility licensed to provide foster care for six or more children pursuant to this chapter shall post a listing of a foster child's rights specified in Section 16001.9 of the Welfare and Institutions Code, as developed by the office of the State Foster Care Ombudsperson pursuant to Welfare and Institutions Code, Section 16164, subdivision (d). The office of the State Foster Care Ombudsperson shall ~~design posters and provide~~ it has designed pursuant to Welfare and Institutions Code, Section 16164 ~~the posters to~~ each facility subject to this subdivision. The posters shall include the telephone number of the State Foster Care Ombudsperson.

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